IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004825

First-tier Tribunal No: PA/55174/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 4th September 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

IOA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr C Holmes of Counsel, instructed by GM Immigration Aid Unit
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard by remote video at Field House on 21 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant, an Iraqi Kurd from Sulaymaniyah within the IKR, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge A Davies) allowing his appeal on humanitarian protection

grounds but dismissing the appeal on asylum grounds. The appellant had appealed to the First-tier Tribunal against the respondent's decision of 14.10.21 to refuse his claim for international protection.

2. After hearing the helpful submissions of both representatives, I reserved my decision and reasons to be provided in writing, which I now do.

3. At [81] the First-tier Tribunal found that on the basis of country and expert evidence the appellant could internally relocate within the IKR outside of Sulaymaniyah. At [82] the judge found that the appellant would be able to return to any part of Iraq without his family knowing about his return and, given the level of tolerance of Christians and Christian converts in the Erbil governorate, internal relocation was reasonably open to the appellant.

4. From [85] of the decision, the judge considered the issue of identity documentation and whether the appellant would be able to return safely and without the risk of destitution. For the reasons set out from [86] onwards of the decision, the appeal was allowed on humanitarian protection grounds on the basis that the respondent proposed to return the appellant to Baghdad and the guidance and evidence disclosed a risk of ill-treatment in onward travel and on arriving in the IKR (other than at Sulaymaniyah).

5. In summary, the appellant sought permission to appeal to the Upper Tribunal, arguing that the findings made by the First-tier Tribunal excluded internal relocation, so that he should have succeeded on Convention grounds.

6. In granting permission, Upper Tribunal Judge Macleman noted that the judge considering permission in the First-tier Tribunal (Judge Oxlade) saw no arguable contradiction between the two outcomes. However, Judge Macleman stated, "*I think the point qualifies for debate*."

7. The renewed grounds point out that the First-tier Tribunal found that the appellant (i) had genuinely converted from Islam to Christianity; (ii) had been disowned and threatened by his father; (iii) would not have state protection on return to his home area; and (iv) could not be returned to his home area as he was without a CSID card and could not secure it or obtain assistance from his family to do so.

8. The grounds argue that as the First-tier Tribunal found that the appellant could not return to live in any area of Iraq outside his home area because he would face conditions which breach article 3, because he cannot redocument himself, "*then it cannot be reasonable for him to relocate to avoid the risk of harm he faces, for a convention reason, in his home area. The judge's conclusion to the contrary at [81] is incongruous and unsustainable. In light of the judge's express findings of fact, the appeal fell to be allowed on asylum grounds. The appellant is at risk in his home area and, on the judge's express findings, would find himself at risk of article 3 harm elsewhere in the country. Relocation, in those circumstances, cannot be reasonable*."

9. In his submissions, Mr Holmes made three short points: the First-tier Tribunal found (i) the appellant would face a Convention risk in his home area; (ii) there was no sufficiency of protection; and (iii) the appellant cannot be returned because of a lack of documentation. It was submitted that if there was an article 3 risk anywhere in Iraq, it would be unreasonable to expect the appellant to relocate.

10. The first difficulty with that argument is that case authority indicates that an appeal cannot succeed on Convention grounds where return is not feasible because of an absence of identity documentation. In SMO & KSP (Civil status

documentation; article 15) Iraq Country Guidance [2022] UKUT 00110 (IAC), the Upper Tribunal held that,

> *"In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents."*

11. The second or following point is that on the express findings of the First-tier Tribunal, the appellant could safely relocate to Erbil without infringing his Convention rights. The only reason why he could not in practice be returned was because of a lack of identity documentation and the inability to obtain it from his family. If he had the correct documentation, he would be able to return and relocate.

12. In HF (Iraq), the Court of Appeal accepted that the appellants in that case could only be returned with the necessary documentation, but and if and when the impediment caused by lack of the relevant documentation is overcome, they would be safe on return. It would only be necessary for the court to consider whether the appellants would be at risk on return if their return were feasible, but the Court of Appeal did not accept that the Tribunal has to ask itself the hypothetical question of what would happen on return if that is simply not possible for one reason or another. On that basis, it may not have been necessary for the First-tier Tribunal to go on to find return without a CSID card would infringe Article 3 ECHR; all the Tribunal had to do was find that return was not currently feasible.

13. Ms Cunha submitted that there was a difference in the tests to be applied: internal relocation must be unduly harsh for the appellant to succeed. There was a difference between being unable to return for practical reasons and a risk on return for the Convention grounds claim. In this case, the only reason why the appellant could not return safely was because his family would not assist in obtaining his CSID. In her submission, conditions which risk infringing article 3 do not on the facts of this case also amount to a Convention reason, or rule out internal relocation.

14. Mr Holmes argued that the tests were interchangeable and referred me to AH (Sudan) [2007] EWCA 297, where the Court of Appeal held that the test of reasonableness of relocation was whether it would be unduly harsh to expect the persecuted person to relocate. He submitted that the article 3 finding was a complete answer to the relocation issue. Ms Cunha submitted that it was clear from the Qualification Directive that the subsidiary protection is by nature a lesser protection and to be distinguished from protection under the Refugee Convention.

15. Whilst I accept that in principle article 3 or humanitarian protection considerations may be relevant to the issue of relocation, in my view the greater difficulty for Mr Holmes' argument is that he has placed the cart before the horse, so to speak, by trying to import the humanitarian protection finding back into the Convention grounds, a circular argument. The reality is that the appellant is not going to be returned whilst he remains without identity documentation. The First-tier Tribunal made an unimpeachable finding that the appellant could not succeed on Convention grounds because there was a place to where he could reasonably relocate without a risk of persecution because of his Christian conversion, or any a risk from his family. However, he qualified for subsidiary protection, humanitarian protection, only because of a risk of conditions infringing article 3 or

humanitarian conditions contrary to Article 15(b) of the Qualification Directive by reason of the absence of documentation. I am satisfied that the two findings are not inconsistent. The only way the appellant would be returned is with his CSID, in which case there is no risk. Without his CSID there is also no risk, because of the opportunity of internal relocation, and only a practical impediment to being returned. Return is not feasible at the present time. For that reason, the First-tier Tribunal was not in error by finding against the appellant on asylum grounds but finding in his favour on article 3 and humanitarian protection under Article 15(b) of the Qualification Directive.

16. In the circumstances, and for the reasons summarised above, there is no material error in the decision of the First-tier Tribunal.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 August 2023